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UNITED STATES HOUSE OF REPRESENTATIVES

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Written Testimony of Montana House Representative Kerry White

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As a fourth generation Montanan and member of the Montana House of Representatives I have grave concerns over the management of our federal lands. In 2004 I joined a group of citizens to form Citizens for Balanced Use (CBU), a grass roots organization promoting shared use of our public lands for multiple use recreation, active forest management, and responsible resource development. At that time the Gallatin National Forest was preparing their new Travel Management Plan and the DEIS showed significant closures of roads and trails to multiple use. These closures would adversely affect opportunities for recreation and more importantly the ability for the Forest Service to actively manage the land.

The 2004 DEIS and ultimately the FEIS numbered more than 5000 pages as illustrated in **Appendix A**. This was a difficult task for the public to consume such a large amount of information in a short 60 day comment period on each document and provide substantive comments to the agency. The record of decision was signed in 2008 and resulted in the loss of nearly half of all motorized trail opportunities. This trend continues today as many forests in Montana have gone through, or are completing Travel Planning or Forest Planning actions.

CBU continues to engage in many of these actions in Montana and other western states as we see the importance of trying to keep recreation and forest management opportunities available and open. To be honest, this is very time consuming and has resulted in little to no success in keeping access open. It seems the Forest Service has a preconceived agenda of closures and a predetermined decision of reducing access.

Under both NEPA 40 CFR 1506.3 and The National Forest Management Planning Act 16 USC 1602-1604 the Forest Service is required to "coordinate" with state, local, and tribal government "Resource Plans" when developing the federal plan. The Forest Service in Montana seemed to ignore local plans as many counties

did not have a formally adopted “Resource Plan” but all the counties in Montana have an adopted “Growth Policy”. Even though the County Growth Policy has much of the required information contained in a “Resource Plan” the federal agency was reluctant to accept a Growth Policy as a Resource Plan because of the title of this plan. “Resource Plan vs Growth Policy”

Realizing this problem I carried and got passed in my first session of legislature HB 169 which allowed the Growth Policy to be the legal document for local governments to use in coordinating with federal agencies on land planning actions. Even after the passage of HB 169, the Forest Service is failing to coordinate with local governments.

The recent release of the Flathead Forest Plan Revision stated on page 46, “Flathead County has a natural resource plan that the Flathead National Forest has determined generally compatible with the proposed plan for the Forest, except for certain goals and objectives (listed under the sections of the Flathead County natural resource plan under forest management, fires and fuels management, recreation, and roads) that are incompatible with proposed plan components. The Forest is committed to working with all local counties to better address the impacts and benefits of management of the Forest.” This statement reflects the lack of the required coordination with the local governments by the Flathead National Forest and rather only addresses what is contained in the Forest Service Land Management Planning Handbook which does mention “Compatibility” specifically under FSH 1909.12 Chapter 40, Section 44, (b)(2)(ii) “The compatibility and interrelated impacts of these plans and policies” but the Forest Service failed to comply with NEPA 40 CFR 1506.2 (4)(d) where it states “To better integrate environmental impact statements into State and local planning processes, statements shall discuss any inconsistency of a proposed action with any State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.”

The Forest Service has failed to effectively coordinate with local governments as illustrated in the Flathead Forest Plan revision document and I have witnessed this in many other cases where the Forest Service has ignored local plans. Because of this concern I wrote a letter in December 2017 to then Forest Service Chief Tony Tooke expressing my concern over the lack of coordination between the Forest Service and local governments. Here is the specific language in my letter to Chief Tooke.

“I would request the employees of your agency to receive training and direction on “coordination”. Coordination is a requirement under NEPA and FLPMA when an agency is completing a significant action but being involved in many of these agency actions over the past many years it is clear there is no consistency or national direction to the specific regions or districts in the process of coordination. I believe proper training on coordination and a policy which provides consistency across the agency would benefit local governments and the public. In Montana we have 56 counties with a responsibility to provide for the Health, Safety, and Welfare of their county residents. Much of our land within these counties is federally managed and plays a significant part in the economic sustainability of these communities. The federal land managers must recognize the importance of their decisions on these communities and take serious consideration of the comments and concerns these local governments have in regards to proper land management. The best way to accomplish this is through coordination and making the federal decision “as consistent as possible” with any local resource plan or Growth Policy. Please consider a review of your coordination policy throughout

the agency and provide training to those specific districts and regions where confusion or insufficient training on coordination exists.”

Senator Jed Hinkle of the Montana Senate hand delivered the letter to Chief Tooke and discussed the contents. Chief Tooke expressed a sincere interest in my concerns over the lack of coordination and sent me a letter stating he was asking Region 1 Supervisor Leanne Marten to meet with me to discuss this issue. I subsequently met with Ms. Marten in Missoula at her office. I raised the issue of lack in her agency coordinating with local governments and showed her the Flathead National Forest revision document as an example where only a single paragraph was devoted to local government participation and only compatibility was mentioned. I explained to her that under coordination the federal agency is required to be as consistent as possible with the local plan and if they are not, the federal agency must provide a statement describing the extent of the inconsistency and more importantly describe the extent to which the agency would reconcile its proposed action with the local plan or law.

I believe Ms. Marten understood my concern and agreed in the deficiency of the Flathead National Forest in coordinating. She stated that the Forest Service needed to do a better job going forward in the area of coordination. I am skeptical that anything will change anytime soon until meaningful training of Forest Service personnel is completed or at least has begun.

I say this because the Custer Gallatin National Forest is in the process of revising their Forest Plan and I am a member of the Custer Gallatin Working Group (CGWG) which has engaged with the Forest Service in completing this plan. This collaborative was initiated by the County Commissioners of 9 counties where parts of the Custer Gallatin National Forest is located. During a meeting of the CGWG, when the ID Team Leader was present, I requested the CGWG facilitator to provide the Forest Service with the Growth Policies of the 9 counties affected by the Forest Plan. At a subsequent meeting of the CGWG I asked the Forest Service ID Team Leader what she was doing in regards to reviewing the Growth Policies. She stated, “We are in the process of doing a consistency review of the Growth Policies.” But at a subsequent meeting she said the Forest Service did not have time to look at all the Growth Policies for consistency but were reviewing them for “compatibility”. I received the following message from the ID Team Leader on February 8th of 2018.

“Kerry, Thank you for your email and question about the proposed action (Custer Gallatin Forest Plan Revision) and review of the County Growth Policy. As mentioned in our email on this subject to you on December 8, 2017, the actual results of the review of “compatibility” of the revised Forest Plan with county and other government plans is part of the Environmental Impact Statement (Draft EIS anticipated fall 2018). We are in an open comment period until March 5 on the proposed action. Feel free to comment and let us know the areas of the proposed action that you do not think are “compatible” or “contrary to the Growth Policy”.

It would seem the Forest Service initially accepted the Growth Policies with the intension of completing the required consistency review but changed course and decided to review them for compatibility. I believe if the agency had clear direction from leadership and training on what is required in law with regards to coordination with local governments in developing a plan that is consistent with the local resource plan or

Growth Policy, the result would be a better plan that benefits the counties and small communities directly affected by these land management decisions.

The result of the Forest Plan revisions and Travel Plan decisions in Montana has resulted in a loss of access to and on our federally managed public lands. Concerned with this loss of access prompted me to introduce and ultimately get passed, HJ 13 in the 2015 session. HJ 13 was a study bill to look at the loss of access to our public lands that has occurred since 1995, the last 20 years. The study was assigned to the Environmental Quality Council (EQC) interim committee which I have been a member of during my 3 terms in the legislature. The EQC prepared a final report which can be found at the following link:

<http://leg.mt.gov/content/Committees/Interim/2015-2016/EQC/Committee-Topics/hj-13/hj13-finalreport.pdf>

In the Executive Summary on page 1 of the report you will see the Forest Service has closed an astounding 21,951 miles of roads on land they manage in Montana since 1995. Each and every one of these roads was important for recreation and management of this land. Many types of techniques were used to close these roads. Some were gated, some had tank traps or pits dug to block access, and many more were put out to bid as “Rip, Slash, and Seed” projects where the road was completely destroyed, trees were cut and placed across the destroyed road bed, and the road bed was reseeded. (**Appendix B**).

In Montana our population demographics show an aging population. With this increase in age comes a greater need and desire for some type of mechanized and motorized transport in order to recreate on our public lands. On page 41 (**Appendix C**) of the Program Evaluation of the Montana State Parks Division presented to the May 2018 EQC meeting the following statement was made:

“Motorized recreation grew significantly with a 300% increase in OHV registration and a nearly 200% increase in snowmobile registration since 2000;”

The complete report can be found at the following link:

<https://leg.mt.gov/content/Committees/Interim/2017-2018/EQC/Meetings/May-2018/parks-program-eval-may-2018.pdf>

The Bureau of Business and Economic Research at the University of Montana completed a study in 2013 on OHV use in Montana. The complete study can be found at the following link:

<http://stateparks.mt.gov/fwppDoc.html?id=67359>

On page 6 of the study it shows that 58% of the survey respondents indicate the lack of access as the number one threat to their enjoyment of this recreation activity. (**Appendix D**)

For the first time in history the U.S. Department of Commerce looked specifically at the economic impact of outdoor recreation and recently released their findings in 2016. According to the report found at the following link:

<https://www.bea.gov/newsreleases/industry/orsa/orsanewsrelease.htm>

On page 2 of this study, motorized use accounted for 59.4 billion of gross output putting it as the number 1 outdoor recreation activity in a 373.7 billion dollar industry. (Appendix E)

The growth of motorized and mechanized recreation contributes greatly to local economies but the Forest Service is not responding to this growth. Rather than increase road and trail opportunities for recreation needs they are closing access. An aging population with a desire to access their public lands are being shut out by gates, blockades, and road obliterations. Many outdoor organizations contribute countless hours of volunteer work in clearing and maintaining these trails. The motorized community is the workhorse of the Forest Service in cleaning up trash, clearing the trails of down timber, installing water bars, spraying weeds, search and rescue, and maintaining these roads and trails for the enjoyment of everyone. Closing access to the fastest growing sector and largest economic contributor in the outdoor recreation industry is not what we should expect from our public land managers. These agencies should be increasing motorized recreation opportunities and partnering with groups and organizations to develop new roads and trails or at the very least stop closing and obliterating this infrastructure. More closures result in more people being concentrated into smaller areas causing more impact to the resource and can increase user conflict.

The Forest Service many times has a desire to separate users in an effort to reduce user conflict. But most often the users removed are motorized and mechanized while other users are allowed everywhere. The closure of these areas to motorized and mechanized use because of user conflict is not a reason to close areas of the forest to specific users. It often times seems the Forest Service is engaging in segregation and viewed by some as discrimination against a certain segment of the population. With an aging population more users lack the ability to hike long distances. Handicapped, disabled, and the physically challenged users are often removed for their public lands because of road and trail closures to motorized transport.

In working for CBU over the past 14 years, our organization has been contacted by many elderly, disabled, and physically challenged individuals concerned about the closures. These folks are no longer able to access the areas they historically once enjoyed. Families with young children and older grandparents are not able to share and enjoy those areas because of road closures. This has a social and emotional impact on this important segment of our population as public lands provide an opportunity to get away and enjoy nature. Nothing more disturbing than finding a locked gate or destroyed road that once provided access to a favorite place or destination.

Not only are road closures preventing access to our public lands but also agency policy has changed over the years. Many forest Districts in Region 1 have adopted a policy of removing motorized and mechanized use in areas where they Recommended Wilderness Areas (RWA) during forest planning. The Custer Gallatin is one such forest where current Forest Planning is in progress and stated in the "Proposed Action – Revised Forest Plan, Custer Gallatin National Forest" on page 93 under "Suitability (FW-SUIT-RWA) 04" it states, "Recommended Wilderness Areas are NOT suitable for motorized and mechanized recreation." The action by the Forest Service in removing historic motorized and mechanized use in areas they deem suitable for wilderness and designating them as recommended for wilderness simply and plainly circumvents the powers of Congress to designate wilderness. The Forest Service is creating wilderness without the consent of Congress.

The Wilderness Study Areas are another area where a change in policy has reduced access. In the Region 1, Forest Service Manual, the management of Wilderness Study Areas is defined under FSM 2329. **(Appendix J)** FSM 2329 (2) states: “At time of designation of these areas, uses that existed in 1977 can be allowed to continue subject to 36 CFR 212.57.” But over the last several years these historic uses have been restricted or completely removed. Areas once enjoyed by motorized access are no longer available. Some uses have been removed through travel planning or forest planning but in some cases such as the Hyalite Porcupine Buffalo Horn WSA both summer and winter motorized historic use was removed through an interim order signed by the Forest Supervisor and simply renewed annually. There are currently legislative proposals before the U.S. House and Senate to release these WSAs in Montana. After 40 years of study and WSA designation it seems the time has come to release these areas that do NOT qualify for formal designation as wilderness.

Another designation which has facilitated closures of our roads and trails is the Clinton Roadless Rule signed by President Clinton during his last days in office in 2001. This Rule designated about 58 million acres in the Western U.S. as roadless but in fact much of this land had roads but with this designation it opened the door for the agency to arbitrarily close existing roads within these areas. An example of the restrictions on lands in my back yard for the Gallatin National Forest (GNF) there are 714,000 acres of congressionally designated wilderness and 740,000 acres designated as roadless under the Clinton Rule out of the 1.8 million acres in the GNF. A mere 345,000 acres remains open in this forest to multiple use management and the new Forest Plan revision will probably restrict additional areas even further.

Road closures have even more of an adverse effect on the ability of the agency to actively manage a growing resource. Our forests are a growing garden and as such should be managed as a garden rather than a hands off, no access, left to deteriorate and burn policy resulting in polluting our air and water, killing wildlife, and putting lives and property at risk.

Over 1.2 million acres burned in Montana last year costing the federal government and the state millions of dollars. The air quality during much of last summer in most of Montana was recorded as very unhealthy or hazardous. Reports to the Legislature Environmental Quality Council on the increase of ER visits during these fires are of great concern. Photos of Billings, Butte, Missoula, and Livingston during the 2017 fires are included. **(Appendix F)** The Montana Department of Environmental Quality has posted on their website a chart of air quality standards and the “effects of wildfire smoke”. **(Appendix G)**.

Please notice under the 4 categories of “Unhealthy for Sensitive Groups, Unhealthy, Very Unhealthy, and Hazardous” the health effect listed is “premature death”. In other words the smoke from these catastrophic fires is killing people. The USDA commissioned a study in 2013 on Wildland Firefighter Smoke Exposure. This can be found at the following link:

<https://www.firescope.org/specialist-groups/safety/hazards/wildfire-ff-smoke-exposure.pdf>

On pages 5 through 7 of this report the list of toxins and their effects on the human body are listed. **(Appendix H)** Maybe the most deadly of these chemicals is Crystalline Silica which has contributed to many individuals in the mining industry contracting lung disease. Crystalline Silica is listed as a human carcinogen by the Occupational Safety and Health Administration. Gases and liquids present in smoke adhere to the

particles and thus can enter the airway, lungs, and bloodstream. (U.S. Department of Agriculture 1989; Bytnerowicz 2009) This report indicates the same deadly carcinogens are released into the air whether from wildfires or controlled burns.

The Montana Constitution states in Article IX, Section 1, “The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.” The smoke from both wildfires and prescribed burns on federally managed land is adversely affecting the air quality and also water quality during spring run off when erosion and sediment pollute our rivers and streams. (**Appendix I**) Montana citizens no longer enjoy a clean and healthful environment during the summer when our air is filled with smoke and ash.

The nearly 22,000 miles of road closures by the Forest Service in Montana has impaired the ability of this agency to reduce fuel loads and actively manage the land they are responsible to care for. This agency has moved toward a policy of introducing more and more fire into the landscape and away from harvesting a renewable resource that benefits small communities throughout Montana. In Mineral County more than 80% of the land base is managed by the Forest Service leaving funding for public services stressed and resulting in a lack of employment opportunities as the Forest Service has reduced timber sales and the supply of logs to one of the last remaining mills in Montana.

The blame is not all on the Forest Service as litigation has halted most of the timber sales in Montana. Take for example the Stonewall Timber Sale near Lincoln, Montana where an injunction issued by a federal judge in response to litigation which halted the harvest. Last year this same timber proposed to be cut was burned in the Stonewall fire, polluting our air, and putting lives and property at risk. This was a total waste of a resource that could have provided jobs to many in the timber industry and improved the forest health. But these litigants are not concerned with jobs and really not concerned about the environment as these lawsuits are mostly about the money they collect through the Equal Access to Justice Act (EAJA) and the destruction of an industry. An industry we dearly need in Montana to tend to our ever growing garden of timber.

There are some solutions in my mind that would improve access and the condition of our forests and also greatly benefit small communities in rural Montana. Here is a list of some ideas that Congress and the Administration might consider.

- Litigation reform to stop the abuse of the EAJA by extreme environmental groups which litigate each and every project.
- Require environmental litigants to post a bond when they sue that is equal to the value of the timber to be harvested or the amount of lost value of the timber in a salvage sale.
- Mandatory arbitration by a select committee before court action can proceed.
- Direction from leadership to require training on Coordination throughout the agency.
- Clearly define coordination in Federal Statute.
- Clear direction from leadership on RWA management to allow existing uses to continue in these areas until Congress considers a formal designation of wilderness.

- Mandate pre-fire planning in cooperation and coordination with state and local governments. Jurisdiction and response decisions should be made prior to fires.
- Revise NEPA to allow NEPA Sufficiency and Hard Release to be applied to areas designated in Forest Planning as suitable for those activities. This would avoid costly preparation of multiple NEPA documents on individual projects already deemed suitable in those areas.
- The 2012 Forest Planning Rule requires collaboration but this term is not clearly defined as to how the agency is to treat the recommendations from collaborative groups. National agency direction should be given to specific regions and districts on how to address collaboration.
- Liability should be assumed by federal agencies for damages when wildfires or prescribed burns leave federally managed land and burn on to state or private land.
- Provide liability insurance or contribute to Workmen's Comp Insurance premiums for volunteer services for trail and road maintenance.

Thank you for the opportunity to come before your committee and provide testimony on the important issue of road and trail closures.

Sincerely,

Representative Kerry White

Montana House District 64